

MEMORANDUM OF LAW

DATE: April 8, 1994

TO: Corey Braun, Planning Department

FROM: City Attorney

SUBJECT: Golden Hill PDO Exception Provisions

This memorandum has been prepared in response to your letter to Hal Valderhaug dated February 24, 1994. You ask whether a developer, who owns five "substandard" adjoining lots in the Golden Hill area, could use the R-1-5000 development criteria to build a home on each of the five lots. After researching this issue, we believe that the developer can not use the R-1-5000 development criteria because the five lots are "substandard."

FACTS

Our legal analysis is based on the following facts. A developer owns five adjoining legal lots. Each lot contains less than 5000 square feet. The five lots are located in the Golden Hill Planned District. The underlying zone allows one residential unit to be built on each lot. The developer proposes building one single family home on each lot and selling the lots separately.

The developer asserts that his project falls within the exception clause set forth in Municipal Code section 103.0711(B)(9). This provision allows developers to use the R-1-5000 development criteria when a lot contains only one dwelling unit. However, the five lots do not meet the minimum dimensions required in the R-1-5000 zone and are therefore considered to be "substandard."

ANALYSIS

Municipal Code section 103.0711(B)(9) provides that "Where an existing legal lot or parcel contains only one dwelling unit, the City wide R-1-5000 development criteria may be used."

However contained within the provisions of the R-1-5000 regulations is the following provision:

No lots or parcels, which are
contiguous to each other and joined

in ownership on or after the effective date of this section shall be separated in ownership so as to create a lot or parcel which has an area of less than that required by the minimum lot dimensions set forth herein....

(Municipal Code section 101.0407(D)(5))

Our analysis is based on several rules of statutory construction. First, an ordinance must be interpreted so as to harmonize its various parts or sections, without doing violence to the language, spirit or purpose of the ordinance. Also, whenever possible conflicting or inconsistent provisions should be reconciled to avoid conflict. *Piazza Properties, Ltd. v Department of Motor Vehicles*, 71 Cal. App. 3d 622 (1977).

Our office has opined in the past that Municipal Code section 101.0407(D)(5) can not prohibit the sale of legally developed lots. This section was only intended to prevent the development of substandard lots. (Memorandum of Law, written by Chief Deputy Fred Conrad, dated August 8, 1983. A copy is attached for your convenience.)

Sections 101.0407(D)(5) and 111.0711(B)(9) can be reconciled to mean that the developer can use the R-1-5000 development criteria only if it does not result in the development of substandard lots. However it is our understanding that in the case before us, the lots intended for development are substandard. Therefore the developer does not qualify for the exception provided by the Golden Hill Planned District Ordinance. (Municipal Code section 101.0407(D)(5).)

Also, the rules of statutory construction require specific provisions to control over more general provisions. *Diamond International Corp. v Boas*, 92 Cal. App. 3d 1015 (1979). In the case before us, the specific provision which prohibits the development of substandard lots should prevail over the general exception language provided by the Golden Hill Planned District Ordinance.

The developer is contending that he was not provided with notice of the prohibition against substandard lots. However this is not a valid consideration since the developer is electing to use the R-1-5000 regulations. Finally, you have indicated that the developer may still develop his property even though the exception provided by the Golden Hill Planned District Ordinance does not apply. He would be required to comply with the standards provided by the underlying zone under this circumstance.

If you have any questions please let me know.

JOHN W. WITT, City Attorney

By

Ann Y. Moore

Deputy City Attorney

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cc Harold O. Valderhaug

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